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Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala

Note by the Secretariat

The report considers the situation of the indigenous peoples of Guatemala on the basis of information received by the Special Rapporteur during her visit to the country between 1 and 10 May 2018.

The Special Rapporteur notes that the situation of the Maya, Xinka and Garifuna peoples is characterized by serious structural problems, particularly the lack of protection for their rights to their lands, territories and resources and the racial discrimination that pervades all areas of life. She expresses her deep concern at the resurgence of violence, forced evictions and the criminalization of indigenous peoples that defend their rights.

Impunity, corruption, institutional weakness, the failure to implement the Peace Agreements and extreme economic and social inequality are the main obstacles. It is imperative that the Government of Guatemala identify the structural problems as a matter of urgency and work towards their resolution.

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* This report is being circulated in the language of submission and English only.

I. Introduction

1. The present report examines the situation of indigenous peoples in Guatemala, drawing on information received by the Special Rapporteur during her visit to the country from 1 to 10 May 2018 and on independent research. The report takes account of the progress made in applying the recommendations made by previous Special Rapporteurs following their official visits to the country in 2002[1] and 2010[2] and the follow-up given to recommendations made by the international and regional human rights treaty bodies.

2. In the course of her visit, the Special Rapporteur held meetings with high-level representatives of a number of different ministries, the Congress of the Republic, the Supreme Court, the Constitutional Court, the Public Prosecution Service, the Office of the Human Rights Procurator, the Presidential Commission on Discrimination and Racism against Indigenous Peoples and the Presidential Commission for Coordination of Human Rights Policies, among others. She also held meetings with the indigenous authorities, indigenous women, civil society organizations, representatives of the business sector, the United Nations system and the international community.

3. The Special Rapporteur visited various indigenous communities and held meetings attended by about 10,000 people from the Maya Mam, Sipakapense, Chuj, Akatek, Q'aanjob'al, Ixil, Kaqchikel, Tz'utujil, K'iche', Ch'orti, Q'eqchi', Poqomchi' and Achi' peoples and the multilingual communities of Ixcán and Petén and also representatives of the Xinka and Garifuna peoples in San Marcos, Chiquimula, Alta Verapaz and Santa Rosa departments. She also visited two detention centres: the Pretrial Detention Centre in District 18 of Guatemala City and Cobán prison in Alta Verapaz.

4. The Special Rapporteur would like to thank the Government of Guatemala for its cooperation and for permitting her to carry out her visit in a free and independent manner. She also wishes to express her thanks for the support of the staff of the Office of the United Nations High Commissioner for Human Rights in Guatemala and Geneva. She is profoundly grateful to the indigenous peoples who received her in their territories and to all those who made special journeys to share their experiences and concerns.

II. General considerations

5. When considering the human rights situation of the indigenous peoples in Guatemala, it is important to bear in mind that they constitute the majority of the country's population. Despite their majority status, the indigenous peoples have never participated on an equal footing in the country's political, social, cultural or economic life. There have been no concerted efforts to come together to build a society based on the rich and vibrant multi-ethnic, multicultural and multilingual reality of the country that the Special Rapporteur observed during her visit.

6. The situation of the indigenous peoples has been determined by fundamental historical and structural issues. Impunity, corruption, institutional weakness and extreme economic and social inequality are factors that are intimately linked with the problems facing the country. Patterns of violence and repression also persist, particularly in the indigenous territories, thus keeping alive the legacy of violence and genocide dating from the time of the internal armed conflict of 1960 to 1996. Although 22 years have passed since the Peace Agreements were signed, the justice and the comprehensive redress that would lead to true national reconciliation have still not been achieved.

7. The main structural problem affecting the Maya, Xinka and Garifuna peoples of Guatemala is all-pervasive racism and discrimination, which amount to de facto racial segregation and impinge on all areas of life. A previous Special Rapporteur, Mr. Stavenhagen, highlighted the four interrelated forms of discrimination that were present in

[1] E/CN.4/2003/90/Add.2.
[2] A/HRC/15/37/Add.8.

the country: legal, interpersonal, institutional and structural. Fifteen years after his visit, the Special Rapporteur could see that, sadly, this situation persists. The indigenous peoples face structural racism in their daily lives, as evidenced in the failure to protect their lands, territories and natural resources and their difficulties in obtaining access to education, formal employment, health care, political participation and justice.

8. The total population of Guatemala is estimated to be in excess of 14.5 million.[3] Estimates of what percentage the indigenous peoples constitute vary widely, depending on the source used. A positive step forward is that, in the 2018 census, the authorities are going to use the criterion of self-identification for the first time on the basis of a respondent's ethnic group and other elements of cultural identity that could help clarify official estimates of the indigenous population.

9. Three indigenous peoples are recognized in Guatemala: the Maya, the Xinka and the Garifuna. The Maya people comprises 22 sociolinguistic groups. The Q'eqchi', Kaqchikel, K'iche' and Mam peoples make up 80 per cent of the Maya population. In Totonicapán, Sololá, Alta Verapaz and Quiché departments, Maya constitute 90 per cent to 97 per cent of the population.

10. According to the 2002 census, 16,214 people self-identified as members of the Xinka people. According to the data of the Parliament of the Xinka People of Guatemala, 351,111 people self-identified as Xinka in 2017 in Santa Rosa, Jalapa and Jutiapa departments.

11. The Garifuna people are based on the Caribbean coast in Izabal department. According to the 2002 census, 5,040 people self-identified as Garifuna, but, according to their own sources, the actual number is about 17,000. The mass migration to the cities and abroad is explained by the difficult socioeconomic circumstances and the racism and discrimination suffered by Guatemalan Garifuna.

12. The Xinka and Garifuna peoples received State recognition as indigenous peoples of Guatemala for the first time in the Agreement on Identity and Rights of Indigenous People but are still calling for constitutional recognition. The Special Rapporteur heard worrying allegations of attempts to deny the Xinka people their right to self-identification. Garifuna organizations condemned the trivialization of their culture, saying that depicting it as folklore had the effect of excluding and marginalizing it.

III. Indigenous rights and the legal and institutional framework

Constitution and international obligations

13. Section III of the Guatemalan Constitution of 1985 states that Guatemala is made up of "various ethnic groups, which include indigenous groups of Maya origin" and declares that the State "recognizes, respects and promotes their ways of life, customs, traditions, forms of organization, the use by men and women of indigenous costume, and languages and dialects" (art. 66). Article 67 provides that the lands of indigenous communities receive special protection from the State. Under article 68, the State undertakes to adopt appropriate legislation and programmes to provide the indigenous communities with the lands that they need for their development. Other articles refer to cultural rights and bilingual education.

14. The Constitution enshrines the principle of equality and the full enjoyment of human rights. Article 46 establishes that international human rights law takes precedence over domestic law.

15. Guatemala ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) in 1996 and is party to the main international and inter-American human rights treaties, with certain exceptions, such as the International Convention for the Protection of All Persons from Enforced Disappearance. It accepted the jurisdiction of the Inter-American Court of Human Rights in 1987, even though the Court

[3] National Institute of Statistics, *Characterization of the Republic of Guatemala* (2016).

declared the Government to be in contempt for its failure to comply with 13 judgments. Guatemala has not recognized the competence of the Committee on the Elimination of Racial Discrimination to receive individual complaints.

16. At the international level, Guatemala has taken on a leadership role on indigenous issues and played an important part in the development and adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples in 2007 and the creation of the post of Special Rapporteur on the rights of indigenous peoples. It is regrettable that these progressive positions are not reflected in its actions at the national level.

Peace Agreements

17. Over the past two decades, a number of measures have been adopted in implementation of the Peace Agreements, particularly with regard to the institutional structure of the State in dealing with indigenous issues, and legal and policy measures have also been taken to address racism and discrimination. Despite this, international and regional human rights bodies have repeatedly drawn attention to the high rate of non-compliance with the Agreements, as noted in a recent assessment by the Peace Secretariat.[4] The worst rate of implementation is documented in the case of the Agreement on Identity and Rights of Indigenous People, under which 19 per cent of commitments have been fulfilled, and in particular measures relating to lands and territories. No action has been taken on the call for constitutional reform to recognize the identity and rights of indigenous peoples, following the rejection by referendum of proposed amendments in 1999.

18. The failure to honour these commitments has threatened progress in many areas, including agrarian reform, recognition of indigenous authorities and justice, political participation, comprehensive development, health and intercultural bilingual education, among others. The Special Rapporteur is of the view that this has prevented true reconciliation following the conflict and lies at the heart of many of the current violations of the rights of indigenous peoples in the country.

Other relevant legislation

19. The Presidential Commission on Discrimination and Racism against Indigenous Peoples has expressed its concern at the low number of complaints concerning offences of racial discrimination. Since it has been classed as a minor offence, complaints are generally heard by magistrates' courts. As stressed by the Committee on the Elimination of Racial Discrimination, there is a need for legislation and measures that will be more robust in combating racism and discrimination against indigenous peoples.[5]

20. The Municipal Code, the Urban and Rural Development Councils Act and the General Decentralization Act contain measures to promote political participation by indigenous communities. The Land Registry Act of 2005 establishes the Land Register with a view to establishing, maintaining and updating the national registration of land.

21. The Special Rapporteur received repeated complaints about more than a dozen urgent legislative proposals of relevance to the rights of indigenous people that have been awaiting discussion or approval in the Congress, some for more than a decade. Priority seems to have been given, however, to regressive legislative proposals that could seriously restrict the exercise of their rights by indigenous peoples.

22. A number of laws require alignment with the country's international obligations relating to the human rights of indigenous peoples. These include environmental legislation, including regulations governing environmental impact studies, and the Mining Act. Some articles of the latter were ruled unconstitutional but were not reformed, with the result that there are gaps in the law in this regard. As noted by the previous Special Rapporteur, Mr. Anaya, other sectoral legislation also fails to include proper measures for the protection of

[4] Peace Secretariat, Office of the President of the Republic, *Policy Agenda for Peace 2017–2026: Outstanding commitments*.

[5] CERD/C/GTM/CO/14-15.

the rights of indigenous peoples, such as the Forests Act, the Hydrocarbons Act and the General Electricity Act.[6]

Development of jurisprudence

23. The Special Rapporteur notes that some progress has been made with regard to jurisprudence on the rights of indigenous peoples as a result of rulings by the Constitutional Court that international human rights standards form part of the constitutional corpus. A number of judgments have recognized the right to collective ownership and the role of the indigenous authorities and systems of justice. Relevant cases include those of the Indigenous Municipality of Chichicastenango in Quiché, the indigenous community of Chuarrancho in Guatemala, the eight Q'eqchi' communities of Sierra Santa Cruz, El Estor and Livingston in Izabal, the Cho'orti' communities of Camotán in Chiquimula, the Guild of San José Poaquil in Chimaltenango, the Mam community of Comitancillo in San Marcos and the Ixil community of Nebaj in Quiché.

24. It should be noted that, in various rulings referred for consultation, international standards were correctly included in the courts' reasoning but not in the measures set out in the ruling and there are clear gaps in the implementation of legislation to monitor compliance with treaties and to ensure that any action taken is reasonable. These discrepancies do not provide indigenous peoples with the necessary legal security for their rights, nor do they help to resolve the basic problems that gave rise to claims. An additional difficulty is the repeated failure to comply with the rulings that are handed down.

Institutional framework and public policies

25. Guatemala has a number of State institutions dealing with indigenous peoples, some established on the basis of the Peace Agreements, such as the Office for the Defence of Indigenous Women's Rights and the Presidential Commission on Discrimination and Racism against Indigenous Peoples. In 2017, the Public Prosecution Service and the judiciary established the Indigenous Peoples' Secretariats and there is the Indigenous Peoples Committee in the Congress. In addition, 34 public institutions have set up "indigenous windows". According to information received, indigenous institutions were allocated only 0.12 per cent of the national budget in 2017.

26. Representatives of these institutions provided information on the work that they do. A number of them operate on an inadequate legal basis, which leaves them dependent on the goodwill of whatever government is in power, with little political weight and a shortage of staff and funding. After two decades of existence, it is worth asking whether the existence of so-called indigenous institutions is not perpetuating the segregation of indigenous issues in State activity and the tendency to see them as marginal.

27. Guatemala has adopted various public policies, strategies and programmes aimed at indigenous peoples or directly affecting them in a number of different areas. The National Compensation Programme was adopted in 2003 to compensate victims of the armed conflict. The State policy on coexistence and the elimination of racism and racial discrimination was approved in 2006. There is a project to foster and safeguard Garifuna culture, but it was drawn up without Garifuna participation and has no budget. Meanwhile, Bill No. 4335 on the establishment of a Garifuna development institute is awaiting approval.

28. In view of the fact that the indicators show an increase in poverty among indigenous people, alongside a rise in inequality and the hoarding of land, it is clear that these actions have not produced effective results. Indigenous organizations have stated that, on the whole, measures and programmes have been designed without proper participation by indigenous people and do not respect their right to their own development models or fit in with their own visions. Moreover, they have no political relevance and lack sufficient funding.

[6] A/HRC/18/35/Add.3, paras. 22, 23, 55 and 56.

IV. Principal areas of concern

A. Rights of indigenous peoples over their lands, territories and natural resources

29. As repeatedly stated by international and regional human rights bodies, the basic underlying cause of the problem affecting the indigenous peoples in Guatemala is the lack of protection of their rights to their lands, territories and natural resources in conformity with the relevant international human rights standards. Guatemala lacks a legal framework or an allocation mechanism to identify and apply the collective ownership rights of indigenous peoples in accordance with their traditional land tenure systems.

30. The disturbing failure to protect these rights arises out of a context of extreme inequality in the distribution of land and the insecurity of tenure, together with an inadequate registration system that enables third parties to be given title to indigenous ancestral lands. Moreover, there are no appropriate mechanisms to settle conflicts of ownership, which means that disputes tend to come before the courts.

31. This situation has deep historical roots. It began with conquest and colonization in the sixteenth century, continued after independence and was exacerbated during the armed conflict, when 1.5 million people, the vast majority belonging to indigenous communities, were displaced by the violence. In 1982, declaring that their lands had been voluntarily abandoned, the Government nationalized them and distributed them to landowners and the military. The Peace Secretariat has stated that there has been little progress in implementing the 1994 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, which should have resolved the situation.

32. The land issue was a central component of the Agreement on Identity and Rights of Indigenous People and the subject of the Agreement on Social and Economic Aspects and the Agrarian Situation. Measures intended to develop a new legal framework, to make land available and to provide support for agriculture in rural and indigenous communities have not been properly implemented. In the area of legislation, only the Land Registry Act referred to above has been adopted, but even that has been weakened by subsequent amendments. The Land Fund has stated that it lacks the necessary budget to comply effectively with its mandate of facilitating affordable access to lands. Up until 2016, of the 800,000 landless families applying for land, only 13,162 — of whom 10,719 were Maya — had received any.

33. Despite the progress made with the jurisprudence of the Constitutional Court, there are no proper mechanisms for the recognition of communal lands to address indigenous territorial claims. The Secretariat for Agrarian Affairs has reported that 1,425 disputes are currently on file, affecting more than a million people. Some of these disputes have arisen out of the shortcomings of the system itself, such as overlapping registers, which occurred in the case of the Choctún Basila community in Alta Verapaz.

34. The inefficiency of the system means that people frequently apply to the ordinary courts or engage in criminal activity to resolve territorial claims. In many cases, court rulings disregard the rights of the indigenous peoples and indigenous claims are not heard as promptly as those of other parties. Previous rights are being ignored, including in situations in which a community has a recognized ownership title, as in the case of the Copones. Communities that submit claims are often the victims of criminal activity and violence, as in the case of the Q'eqchi' and Ch'orti' communities. Communities often have to resort to *amparo* in order to safeguard their territorial rights.

Mining, energy, infrastructure, conservation and other activities that affect indigenous lands, territories and resources

35. The insecurity of land tenure suffered by indigenous peoples is exacerbated when licences are issued without prior consultation or consent, and in contravention of the country's international obligations, for mining, energy, agro-industrial, infrastructure, conservation and other activities, that affect their traditional lands and resources. The legal

framework regulating such activities is not in conformity with international standards. No proper environmental impact studies are conducted and no attention is paid to the cumulative impact of the projects concerned. Nor are social and cultural impact studies conducted from a human rights perspective.

36. In addition to the question of territorial rights and consultation, projects that are imposed on indigenous peoples disregard their rights to their own development models and have a serious impact on other human rights. It has been pointed out that the areas in which foreign investment is most highly concentrated are also the areas with the worst human development indicators, which indicates that the indigenous communities affected do not benefit from such projects. It is telling that, in Alta Verapaz, in areas with a high number of hydroelectric power plants, the communities have no electricity. In San Pablo, in San Marcos department, there are serious problems with electricity costs and supplies. Departments where agro-industry is particularly active, such as Alta Verapaz, exhibit the highest levels of acute malnutrition. In cases where a single water source is used for both monoculture crops and hydroelectric power plants, there is a serious impact on the indigenous communities' human right to water.

37. The Special Rapporteur is concerned about the countless statements that she received regarding hydroelectric, mining and agro-industrial projects, the licensing and operations of which have violated the rights of indigenous peoples. In the Q'eqchi' community of Sepoc in Alta Verapaz, she heard complaints about the impact that dams across the Cahabón River have had on the local communities' access to water and about the fact that the community leaders have been treated as criminals for their opposition. Permanent licences for the Oxec I and Oxec II hydroelectric power plants were issued without consultation with the communities. In April 2016, the Constitutional Court ruled in favour of an *amparo* plea submitted by a number of communities[7] and ordered the Ministry of Energy and Mining to hold retrospective consultations but omitted to order a suspension of operations. This is not in conformity with international standards. There was also a failure to hold consultations on the Santa Rita hydroelectric power plant on the Icbolay/Dolores river or the Renace complex on the Cahabón river.

38. A similar scenario occurs when it comes to mining projects. Complaints were received about water use, threats, criminal activity and violence associated with the Los Manantiales mining project in Chiquimula and the lack of respect shown for the ownership titles of the various communities concerned. In San Juan Sacatepéquez, the communities are suffering similar problems caused by the operations of Cementos Progreso, despite their efforts to find a solution. The recommendations of the previous Special Rapporteur, Mr. Anaya, and the precautionary measures imposed by the Inter-American Commission on Human Rights in the case of the Marlin mine have not been implemented. The Special Rapporteur is concerned at the divisions within the communities and the deterioration in their own forms of social organization and authority caused by the mining activities.

39. The Constitutional Court has also ordered the suspension of mining projects because of the lack of consultation. In Casillas, in Santa Rosa, the Special Rapporteur met with mayors, women and members of Xinka communities affected by the San Rafael mine, whose operations are suspended pending a definitive ruling by the Court. In addition to the failure to consult, there were allegations that the Xinka identity was denied and that, in addition to criminalization, there had been an impact on livelihoods, water and housing.

40. The rights of indigenous people, including the right to water, are affected by the expansion and impact of monocultures, owing to the pollution and diversion of rivers and the alteration of their courses for irrigation purposes. This affects access to water for domestic use and the rights to health and food, especially food for children and pregnant women. There were also complaints about the impact of spraying and the use of dangerous pesticides. Three years ago, there was very serious pollution of the La Pasión river in Petén as a result of the activities of Reforestadora de Palmas del Petén S.A. (REPSA), an African palm grower, yet those responsible were not punished. On the Pacific coast, the south-west and the Northern Transversal Strip, the increasing appropriation of community land to

[7] Consolidated files 90-2017, 91-2017 and 92-1027.

make way for large plantations, especially palm oil plantations, is a cause for concern. A dispute between 14 communities in El Estor in Izabal and a palm oil company, which is delaying the granting of title to the Q'eqchi' communities of Sierra de las Minas and Caxlampop Paxte, has still not been settled.

41. There are worrying instances of labour exploitation and violation of labour rights on the San Gregorio Piedra Parada coffee plantation, where for years the company deducted the workers' social security contributions but failed to remit them, as a result of which the workers found themselves without pensions just at the time that they were evicted from their lands. In 2017, one of these workers was killed in the course of a peaceful demonstration. A recurring complaint is that, in many of these situations, claims before the ordinary courts do not succeed.

42. There have also been violations of rights over lands and territories, owing to a lack of consultation and consent in the establishment and management of protected areas. The Protected Areas Act of 1989 does not protect the rights of indigenous peoples or stipulate the requirement of consultation and consent. At the same time, licences have been granted for the exploitation of natural resources in protected areas, such as the Laguna Lachúa National Park in Alta Verapaz. The same disregard of indigenous peoples' rights seems, as claimed by a number of Q'eqchi' and Poqomchí communities, to be evidenced by the implementation of the reduced emissions for deforestation and degradation (REDD+) programme.

43. The Special Rapporteur held meetings with representatives of the Coordinating Committee of the Agricultural, Commercial, Industrial and Financial Associations and also with private-sector companies and associations, including Minera San Rafael, Tahoe Resources and the Oxec I and II hydroelectric power plants, which provided documentation on their projects and their corporate social responsibility activities. They alleged that there had been cases of theft, offences against workers and other employees and the destruction of property in plantations and facilities. Despite the fact that, in 2014, the Coordinating Committee signed up to an institutional policy on human rights and business, none of the companies concerned have carried out human rights impact studies. The Special Rapporteur recalls the obligation of companies to respect due diligence and the human rights of indigenous peoples.

44. The Special Rapporteur wishes to express her concern at the massive escalation in the violation of indigenous peoples' rights that is occurring against the backdrop of these projects. It is also a matter of grave concern that the communities' peaceful protests in the face of this situation seem to be considered by the State and the third parties involved to be examples of criminal activity that undermines public safety, yet no measures are being adopted to resolve the structural problems and the human rights violations that are causing the situation.

Forced evictions

45. Among the most serious consequences of the failure to protect indigenous territorial rights are the forced evictions of indigenous communities. The Special Rapporteur received testimony on indigenous communities forcibly evicted from areas under the protected areas regime and from lands claimed by public institutions, individuals or businesses.

46. In many cases, the evictions are ordered by the Public Prosecution Service on the grounds of the offence of aggravated trespass, a legal concept adopted in 1996 that gives communities no opportunity to prove their rights over the occupied lands. Eviction orders are carried out by the National Civil Police and, where protected areas are involved, staff of the National Protected Areas Council. On occasion, the army has participated. It is claimed that private security personnel have participated in some cases. No prior examination of the Land Register was made to check on the rights that the communities might have over lands that were allegedly illegally occupied, while the possibility of traditional ownership, or the possession in good faith enshrined in law, was disregarded. Prior notification is rare and communities learn about an order only when the security forces arrive, often in disproportionate numbers, and order immediate eviction. Before the evictions, orders are usually issued to seize members of the community, who are then detained. The Office of

the Human Rights Advocate and the Presidential Commission for Coordination of Human Rights Policies may attend as observers but do not always put in an appearance. According to the Office of the Human Rights Advocate, evictions have never been accompanied by a relocation plan and no provision has been made for temporary accommodation or for emergency health care, food or education.

47. The Special Rapporteur met with indigenous women evicted from the communities of La Cumbre in Alta Verapaz, who are labour tenants, and Chab'ilch'och' in Izabal. They alleged that the population, — especially women and girls — had suffered violence and that homes, belongings and crops had been burned. The violence used in the evictions had terrified the population and some families had fled to the mountains, where they were surviving for the time being in precarious conditions that affected children, older persons and pregnant women in particular. The lack of assistance following the evictions had the effect of increasing hunger and malnutrition, which had a corresponding impact on health.

48. There were also complaints of evictions in Petén department, including Centro Uno, the Nueva Esperanza community, Vergelito and the Laguna Larga community. The latter community is under protective measures from the Inter-American Commission on Human Rights, which are being duly implemented. It was repeatedly claimed that many of the evictions were carried out to protect private interests, including those of private companies and even organized crime.

49. The Presidential Commission for Coordination of Human Rights Policies has registered 45 evictions and reports that more than 100 appeals are outstanding, which is indicative of the magnitude of the problem. Forced evictions are being carried out despite the establishment of a high-level panel on forced evictions and an undertaking to apply international standards. The Public Prosecution Service has issued a general order setting out guidelines and blueprints for action with regard to complaints relating to trespass offences, but their implementation at the local level remains problematic.

50. The Special Rapporteur is concerned at the lack of empathy displayed by State institutions, including those responsible for monitoring human rights, in discussing this extremely serious problem. Their neglect of their responsibilities contrasts strongly with their diligence in submitting claims seeking eviction, thus leaving the persons affected in a desperately precarious and defenceless situation.

B. Criminalization and attacks

51. The increasing frequency of criminal proceedings against indigenous persons who are defending their lands and resources is a matter of the most serious concern. In the majority of cases, the underlying cause is the indigenous communities' lack of security of tenure over their land. The criminalization has led to increased social tension and a loss of confidence in the justice system on the part of indigenous people.

52. Various indigenous authorities reported that they were intending to resolve the land conflicts peacefully and, in a number of landmark cases, they submitted legal applications to enforce their rights, which went as far as the Constitutional Court. In the majority of cases, however, these applications enjoyed little success, since the justice system did not hear their claims. It is striking that, even as these applications are being ignored, many of the leaders and members of the communities submitting them are being prosecuted on criminal charges, which are heard promptly. Even in cases in which the Constitutional Court has found in favour of the communities, community leaders have been subjected to criminal trials.

53. The Special Rapporteur observed repeated examples of this kind of charge, involving accusations of aggravated trespass, unlawful association, seizure, robbery, coercion, incitement to crime and even murder; some of these do not qualify for alternatives to deprivation of liberty. She was told about arrest warrants issued on weak evidence and uncorroborated witness statements. She is also concerned at the repeated suspension of hearings, as a result of which trials are prolonged, and the long periods of pretrial detention. It is disturbing that aggravated trespass is considered a flagrant offence, which

automatically involves restrictions on the right to a defence guaranteed under international human rights standards.

54. In some of these cases, companies or large landowners participate as persons associating themselves with the prosecution against indigenous defenders and play a fundamental role in ensuring that criminal proceedings are held. In that context, allegations of collusion by prosecutors and judges with companies and landowners at the local level are a matter of deep concern.

55. The Special Rapporteur visited various indigenous representatives imprisoned on charges of this nature. At the Pretrial Detention Centre in District 18 of Guatemala City, she met Abelino Chub Caal, a human rights defender who had helped the indigenous communities in Sierra Santa Cruz in Izabal. The Constitutional Court had granted the Sierra Santa Cruz communities *amparo* to nullify property registrations in the area, which showed irregularities. Mr. Chub Caal has been in pretrial detention since 4 February 2017 on charges including aggravated trespass and unlawful association. He is being held 320 km away from his family. The Special Rapporteur is concerned that High-Risk Trial Court A decided to include Mr. Chub Caal in the trial.

56. At the Cobán Pretrial Centre, in Alta Verapaz, the Special Rapporteur visited a number of imprisoned indigenous representatives, including representatives of the Choctún Basilá community, and Bernardo Caal Xól, who submitted the *amparo* application on behalf of the indigenous communities affected by the Oxec power plant. He was arrested in January 2018 on charges of aggravated robbery and aggravated false imprisonment. Prior to his arrest, he had been subjected to acts of intimidation and a campaign of defamation on social media.

57. Both Abelino Chub Caal and Bernardo Caal Xól stated that they feared for their safety. The Special Rapporteur calls on the Government to take steps to ensure that their physical integrity, and that of other indigenous defenders deprived of their liberty, is protected and emphasizes the country's obligations under ILO Convention No. 169, article 10 of which stipulates that preference should be given to methods of punishment other than confinement in prison when penalties are imposed on members of indigenous peoples.

58. The launch of criminal proceedings against indigenous authorities and leaders who are defending their rights is generally preceded by defamation campaigns, on social media and elsewhere, depicting them as violent criminals, or even terrorists, with a view to discrediting their legitimate exercise of their rights. For example, one chamber of commerce reported Bernardo Caal Xól to the Public Prosecution Service in March 2017 for "destabilizing the hydroelectric sector and causing conflict" and engaging in "activities harmful to national security".

59. A related concern is the criminalization of community radio. This often takes the form of breaking into a radio station, seizing equipment and accusing the staff of criminal offences. Community radio stations that broadcast in indigenous languages constitute a crucial means of providing indigenous peoples with access to information, particularly in rural areas. The current General Telecommunications Act gives preference to commercial radio stations and makes it almost impossible for communities to obtain a State-authorized radio frequency, notwithstanding a Constitutional Court ruling in 2012 urging the Congress to reform the law. The Special Rapporteur recalls that the United Nations Declaration on the Rights of Indigenous Peoples provides that indigenous peoples have the right to establish their own media in their own languages (art. 16, para. 1).

60. Guatemala is faced with an alarming intensification of violence, which is shown in the increase in the number of murders of indigenous defenders who attempt to defend their rights over their traditional lands. Seven indigenous offenders were murdered during the visit of the Special Rapporteur and over the following days. The Special Rapporteur strongly condemns these murders. She calls on the Government to ensure that they are duly investigated and that the perpetrators are brought to justice, in order to avoid impunity and an environment in which attacks against persons who defend their rights are tolerated.

61. She is also concerned at the risk that opportunities for the defence of human rights are being closed off, particularly with the passage through the Congress of Bill No. 5257,

which proposes reforms to the Non-governmental Organizations for Development Act that would impose restrictions and controls on the registration and functioning of non-governmental organizations. This could be incompatible with their rights to freedom of expression and association.

C. Right to self-determination, autonomy and self-government

Consultation and consent

62. Despite the serious structural problems noted above, the key issue with regard to indigenous rights in Guatemala seems to be the question of consultation. It is worrying that this question is treated as a matter of security and guarantees for investment and not as a human rights issue and that the discussion focuses only on the implementation of projects to exploit natural resources.

63. Consultation in Guatemala continues to be governed by the Municipal Code and the Urban and Rural Development Councils Act, even though these laws are not in line with the relevant international standards. The Municipal Code gives municipalities the power to set up consultations, including consultations with indigenous communities and authorities. The Urban and Rural Development Councils Act contains a temporary provision stipulating that, until the adoption of the corresponding legislation, consultations on any development measure affecting indigenous peoples must be held through the indigenous representatives on the Urban and Rural Development Councils, who are not actually the indigenous peoples' traditional authorities. The previous Special Rapporteur, Mr. Anaya, drew attention to these concerns as long ago as 2010 and the Special Rapporteur notes that the situation has not improved since that time.[8]

64. Owing to the contradictions in the legal framework and the State's failure to comply with the indigenous peoples' rights to consultation and consent, the indigenous communities have developed so-called "good-faith community consultations". It is estimated that between 84 and 114 such consultations have been held, almost 90 per cent of them on activities to exploit natural resources. A number of indigenous communities stated that these consultations were consonant with their world views and their traditional decision-making methods.

65. The indigenous communities have also applied to the courts over the lack of proper consultations. The Constitutional Court has handed down over 55 rulings on consultation with indigenous peoples since 1996. As indicated above, these rulings are sometimes contradictory, with the result that a consistent jurisprudence that is in line with the relevant international standards has not been established. This has increased pressure, especially from the private sector, for legislation that will ensure legal certainty for its investments, particularly since some rulings have ordered the cessation of activities on which no consultations were held.

66. Over the past few years, a number of proposals have been put forward by the Government and members of the Congress for legislation and instruments governing the right to consultation. In July 2017, the Ministry of Labour issued operative guidelines on the holding of consultations with indigenous peoples. The Ministry stated that the guidelines, which had been drawn up following a participatory process, would form part of the future law to be drafted and adopted by the Congress within a year, with participation by indigenous people, in accordance with the order issued by the Constitutional Court in its judgment in the Oxec I and Oxec II case in May 2017. At the same time, it put forward other legislative proposals.

67. Members of the Indigenous Peoples Committee and the Human Rights Committee of the Congress said that it would be impossible to comply with the Constitutional Court order within the deadline that had been set, given that they were unable to hold the

[8] A/HRC/18/35/Add.3, paras. 20, 21, 48 and 49.

necessary consultations with the indigenous peoples and that indigenous authorities and organizations were clearly opposed to the adoption of legislation.

68. Indigenous representatives stated that the principles of the consultation process were set out clearly in international standards and did not require further development at the national level. They expressed their fear that any legislation would seek to restrict the right to consultations and consent and would not respect the indigenous peoples' own procedures. The Special Rapporteur considers that this issue requires more detailed consideration than she has been able to give it in the present report, but she wishes to draw attention to a number of basic factors that do not seem to have been taken into account in most of the proposals put forward.

69. The Special Rapporteur wishes to make it clear that the State is under an obligation to apply international standards on indigenous peoples' rights, regardless of whether or not a specific law is in place. It cannot be argued that human rights obligations can be observed only once a law has been adopted. The duty to consult already applies and, moreover, the legislative proposals that have been drawn up without consultation do not comply with international standards.

70. It must be emphasized that the indigenous peoples' right to consultation is not an isolated right. On the contrary, it arises out of their substantive rights, particularly the right to self-determination and associated rights over their lands, territories and natural resources. The Government should take all these rights into consideration when it complies with its obligations under ILO Convention No. 169. Moreover, these obligations should be interpreted in the light of other international standards on the rights of indigenous peoples, particularly those contained in the United Nations Declaration on the Rights of Indigenous Peoples and the relevant instruments and jurisprudence of the inter-American human rights system. These standards stress the importance of the free, prior and informed consent of the indigenous peoples.

71. In view of the wide divergences of opinion regarding the substance and the application of the right to consultation and consent, the priority should be to build consensus between the State and the indigenous peoples on these questions as a prerequisite for the drafting of any legislation.

72. The Special Rapporteur recognizes that, in a situation in which, as described in the present report, indigenous peoples' rights are violated, it is difficult to build mutual trust. The Government of Guatemala should strive to make substantial progress in protecting and realizing the rights of the indigenous peoples over their lands, territory and resources and in recognizing their authorities and jurisdiction, with a view to embarking on a new relationship with them so that a dialogue can be held in good faith on the best way to guarantee their rights to consultation and consent. It is also essential that the authorities issue no new licences without consulting and gaining the consent of the indigenous peoples concerned.

Indigenous government institutions and political participation

73. The Constitution recognizes the indigenous peoples' "forms of organization", but the recognition of their institutions is not properly reflected in the legal system, as required by ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. The agrarian system and legislation on decentralization have established new official bodies that have contributed to the weakening of the traditional structures. Decision-making powers are concentrated in these bodies and the traditional authorities have been sidelined in that respect. The Special Rapporteur heard numerous allegations about the role played by the Urban and Rural Development Councils in many communities; they are said to support outside interests while disregarding the communities' own authority structures. She also heard allegations of corruption and of violence and threats by members of the Councils directed against not only indigenous authorities but also women and girls.

74. Article 20 of the Municipal Code stipulates that indigenous communities should register with the civil registry of the relevant municipality as a prerequisite to being recognized as such and to subsequently claiming communal title over lands and natural

resources. The administrative procedure involved is subject to various constraints and depends on the goodwill of the municipality concerned. There are some positive examples, such as the restoration by the municipality of Jalapa of the status of the indigenous community of Santa María Xalapán or the registration of the communities of Concejo Maya Mam de San Pablo in San Marcos.

75. Other municipalities, such as Sayaxhé and Poptún in Petén, have refused to register indigenous communities. The municipality of Camotán in Chiquimula denied the Ch'orti' community of Morola the status of a collective subject of rights and banned it from managing its communal lands and resources. The indigenous communities of the municipality of Ixcán in Quiché were informed that, if they registered the community, they would lose the financial benefits that they received from the municipal budget. A number of indigenous communities went to court to establish their institutional status. The Constitutional Court found for the communities in the case of the Kaqchikel of Chuarrancho. There persists, however, a general resistance to the recognition of indigenous authorities, even where there are court rulings in their favour.

76. It is striking that there is scant representation of indigenous people in the country's political life. Out of a total of 158 members of the Congress, only 18 are Maya (including 2 women) and there are no Xinka or Garifuna representatives. There is greater representation in the municipalities, especially in areas where there is a majority indigenous population, but it is still limited, even if the Urban and Rural Development Councils are taken into account. The indigenous presence in State institutions is also meagre, reflecting the high levels of racism and discrimination that persist in Guatemalan society. Affirmative action is required to make up for this inadequate political representation.

Indigenous jurisdiction

77. One positive step forward is the recognition of the country's legal pluralism in the judgments of the Guatemalan high courts, which stress that international standards on this issue form part of the constitutional corpus. However, the necessary measures for its effective recognition or for its alignment with ordinary justice have not been adopted, despite the support of the Public Prosecution Service and the Indigenous Peoples' Secretariat of the judiciary for dialogue between the indigenous authorities and the staff of the ordinary justice system.

78. In 2016, as part of the national dialogue on constitutional reform of the justice system, discussions were held on incorporating the recognition of indigenous justice into the Constitution. Indigenous peoples and authorities actively participated in the discussion of these fundamental reforms. In a debate in the Congress, the provision relating to the indigenous justice system aroused strong opposition, not only from members of the Congress but also from the private sector and public opinion, and gave rise to a campaign in the press and social media that was deeply imbued with racial prejudice. In view of the polarization and the deadlock in the Congress, the indigenous authorities announced that they would withdraw the proposal on the issue so that the other constitutional reforms to strengthen the institutions of the justice sector could move forward. The debate has, however, not advanced since then.

79. The indigenous authorities exercise their jurisdiction across large areas of the country. Violent crime rates are the lowest in the areas in which indigenous justice applies, such as San Marcos, Sololá, Totonicapán, Baja Verapaz and Quiché departments, where, according to information received, there was not a single murder in a number of municipalities in 2017. The full recognition of legal pluralism and indigenous jurisdiction, and their alignment with the ordinary justice system, would not only lead to fuller compliance with the country's international commitments but would have a positive impact on combating impunity and fostering good governance.

D. Access to justice

80. The Special Rapporteur noted encouraging progress in the justice sector as it affects the indigenous peoples of Guatemala, including the commitment by the Public Prosecution

Service to combat impunity and corruption, and the action taken to improve indigenous people's access to justice and to abide by indigenous jurisdiction in practice.

81. The Special Rapporteur received information on the Policy on Access to Justice for Indigenous Peoples, the implementation plan of which is being developed by the Indigenous Peoples' Secretariat of the Public Prosecution Service, and on the steps taken to facilitate such access, such as the provision of interpretation services and training for justice officials in indigenous peoples' rights, including training courses run by the judiciary's School of Legal Studies.

82. Notwithstanding these efforts, indigenous people continue to experience serious difficulty, against a backdrop of extreme impunity, in obtaining access to the ordinary justice system in a way that meets the relevant international standards. The Special Rapporteur received numerous testimonies about the discrimination and racism suffered by indigenous people, particularly indigenous women, when they apply to the courts at the local level. For geographical and linguistic reasons, the Garifuna people face special difficulties. There are no municipal offices of the Public Prosecution Service in Livingston and only one district court in Puerto Barrios. It is therefore very difficult, owing to the cost of transport, to submit claims or keep track of cases.

83. The record of the Public Prosecution Service is clearly contradictory, with, on the one hand, its excellent work against impunity and corruption, its support for indigenous jurisdiction and the standards on indigenous people's rights that it has adopted and, on the other, the conduct of many of its local prosecutors. There is a lack of scrutiny and support in the consistent application of international standards by the staff of the Service. There were reports of cases in which anthropological surveys had been stopped. The Public Criminal Defence Institute lacks resources, especially in respect of its programme on setting up offices for the defence of indigenous rights.

84. The Special Rapporteur is concerned at the pressure, including threats, to which staff and institutions of the legal system that deal with cases involving indigenous people's rights are subjected. She also notes that the general tendency to resort to criminal prosecutions to deal with problems relating to rights over lands and natural resources places an impossible burden on the legal system that it cannot cope with, if it is to function properly.

E. Freely determined development, poverty and racism

85. Over the past 10 years, the national economy has continued to grow, yet inequality has increased. Approximately 80 per cent of indigenous people live in poverty, whereas, according to the National Standard of Living Survey for 2014, the poverty rate among the non-indigenous population is 46 per cent. About 40 per cent of indigenous people live in extreme poverty and more than half of indigenous children suffer from chronic malnutrition. This is a problem of alarming proportions for the country. Unless radical measures are taken, such a negative trend will make it impossible for Guatemala to fulfil its commitments under the Sustainable Development Goals to "leave no one behind".

86. According to official estimates, public expenditure for indigenous people is less than half of that for the rest of the population. This indicates profound institutional discrimination. The situation is aggravated by the systematic corruption and one of the lowest levels of tax collection in the world.

87. Almost 70 per cent of the indigenous population work in the informal sector and only 10 per cent of the persons in receipt of social security are indigenous. The situation of indigenous workers is extremely serious, with the persistence of such practices as labour tenancy.

88. The Special Rapporteur met indigenous persons with disabilities who told of the multiple and intersectional discrimination that they faced, especially girls and women. There is a lack of proper policies and services. In general, persons with disabilities face serious restrictions on effective participation in the community, independent living and the enjoyment of their rights on an equal footing with others.

F. Health

89. The majority of the indigenous population does not have access to primary health care. State investment in health services is among the lowest in Latin America. The Special Rapporteur was able to observe the lack of facilities, personnel and medicine in the territories that she visited. Maternal mortality in Guatemala is the second highest in the region.

90. Indigenous midwives are essential in providing accessible and culturally appropriate mother-child health services. The Special Rapporteur considers the adoption of the National Policy on Indigenous Midwives to be a positive step and calls on the Government to guarantee the budget necessary for its full implementation, thereby honouring the work of these women.

G. Education

91. A previous Special Rapporteur, Mr. Stavenhagen, stated in his report as long ago as 2002 that intercultural bilingual education should be strengthened as a national priority.[9] In 2016, the Constitutional Court ruled, in the case of Santa Catarina Ixtahuacán, that the Ministry of Education must develop intercultural bilingual education and put it into operation within six months, but the necessary measures have not yet been adopted.[10] The Ministry reported that, in 2018, it had developed Maya, Garifuna and Xinka curricula. Indigenous organizations allege that there has been serious retrogression in this regard, owing to a failure of political will and inadequate funding.

92. Indigenous children continue to have very restricted access to education. Half of indigenous children do not go to school. The situation of indigenous girls is particularly alarming, inasmuch as they receive only two years of education, on average, as against six years for non-indigenous girls.

93. In addition to the failure to implement proper intercultural bilingual education, conditions in the education service are abysmal, including overcrowded classrooms, poor-quality teaching, dilapidated facilities and racism and discrimination in the education system. The Special Rapporteur was repeatedly informed of school fees that forced indigenous children to leave school and led to a rise in the overall dropout rate.

94. The national curriculum does not contain information on the impact of the armed conflict on the indigenous peoples. The Special Rapporteur considers it essential for this topic to be covered, so that children and young people, both indigenous and non-indigenous, can learn about the legacy of the conflict and its consequences.

H. Indigenous women and girls

95. The Special Rapporteur held separate meetings with the indigenous women in all the communities that she visited and she is concerned at the multiple forms of discrimination and violence that women suffer, despite the existence of national legislation on domestic violence, sexual violence, trafficking, sexual exploitation and femicide. She was told of a number of cases of the rape or murder of indigenous women and girls, of abuse against them during forced evictions and of the impunity for those crimes.

96. Women who have been criminalized, and the wives of men who have been criminalized, are stigmatized in their communities. They face serious financial difficulties in feeding their children and sending them to school. The presence of corporations in indigenous territories exposes women and girls to sexual and labour exploitation. In the Ixil region, the indigenous women claim that there is a direct correlation between the presence of mining projects and the increase in prostitution and domestic slavery.

[9] E/CN.4/2003/90/Add.2, para. 77.

[10] Consolidated files 4783-2013, 4812-2013 and 4813-2013, of 5 July 2016.

97. The Special Rapporteur notes with concern the lack of intellectual property protection for indigenous textiles and clothes.

I. Responsibility and remedies for crimes committed during the internal armed conflict

98. The wounds of the internal armed conflict have not yet healed. The conflict produced not only the forced displacement of over 1.5 million people, the majority of them indigenous, but also extrajudicial executions and the enforced disappearances of more than 200,000 people, 83 per cent of them Maya. Although the Commission for Historical Clarification concluded that State and paramilitary groups were responsible for about 93 per cent of violations, virtually no one has been held accountable.

99. As regards action against impunity, the Special Rapporteur considers that an important step forward was taken in 2016 with the conviction of two former soldiers in the Sepur Zarco case for the murder, rape and sexual enslavement of Q'eqchi' women during the armed conflict, but the compensation measures awarded under the judgment are still awaiting implementation. The Special Rapporteur also recognizes the importance of the convictions on 23 May 2018 in the Molina Theissen case for crimes of torture, sexual violence and enforced disappearance committed in 1981.

100. In other key cases, especially in the Ixil genocide case and the so-called CREOMPAZ case, proceedings were repeatedly held up as a result of delaying tactics, such as abusive applications for *amparo*. The Special Rapporteur met victims of these and other cases involving massacres and serious violations, who told her of their suffering and humiliation, aggravated by the State's failure to take responsibility and provide redress. The National Compensation Programme should carry out its mandate to provide individual and collective redress for victims of violations committed during the internal armed conflict. It is a matter of concern that the Programme lacks a proper budget, trained human resources, clear internal guidelines and a victim-centred focus on providing redress.

V. Conclusions and recommendations

101. **The situation of the Maya, Xinka and Garifuna peoples of Guatemala centres on the fact that they suffer from serious historical and structural problems that prevent them from enjoying their individual and collective human rights, particularly the racism and discrimination that permeate every aspect of the country's life. Impunity, corruption, institutional weakness and extreme economic and social inequality are all factors in the problems that these peoples face. It is imperative that the Government of Guatemala identify, confront and take action to resolve these structural problems as a matter of urgency.**

102. **There are also persistent patterns of violence and repression that keep the legacy of the internal armed conflict alive. The failure to implement the Peace Agreements has prevented true reconciliation after the conflict and is the source of many of the current violations of indigenous peoples' rights in the country.**

103. **The Special Rapporteur makes the following recommendations:**

General considerations

(a) **The State should fully commit itself to the work against corruption and impunity jointly carried out by the International Commission against Impunity in Guatemala and the Public Prosecution Service. It is recommended that an investigation be undertaken into the connections between corruption in the registration and ownership of land and the expropriation of indigenous communities' lands;**

(b) **The right of the Xinka, Garifuna and Maya indigenous peoples of Guatemala to self-identification should be respected. The State should support the**

indigenous peoples' own procedures for fostering and asserting their cultures and identities;

(c) The 2018 census should use appropriate procedures for collecting and processing data on the ethnic identity of indigenous peoples, with their active participation.

Legal and institutional framework

(a) Full implementation of the Peace Agreements should be resumed as an urgent priority on the Government's agenda, beginning with the adoption of the relevant pending legislation and the necessary constitutional reforms;

(b) The legal framework should be strengthened and more decisive action should be taken in all areas, especially justice, health and education, to eradicate racism and discrimination. The competence of the Committee on the Elimination of Racial Discrimination to receive individual communications should be recognized;

(c) It is also necessary that Guatemala engage in the harmonization of its legislation with its constitutional and international obligations on indigenous peoples' rights, as contained in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and the relevant instruments and jurisprudence of the inter-American human rights system, among others;

(d) A process of evaluation should be set in motion, with the full participation of the indigenous peoples, to determine whether institutions dealing with indigenous people really achieve their objectives.

Lands, territories and natural resources

(a) All branches of the Government should take coordinated action to confront the disturbing situation of violations of indigenous peoples' rights over their lands, territories and natural resources;

(b) It is essential to develop a legal framework and an effective system for the recognition and protection of indigenous peoples' ancestral rights of ownership, use, development and control, in accordance with the country's international obligations in this regard. Measures should be adopted to monitor and punish fraudulent transactions and to curb land grabbing;

(c) The State should respect the right of indigenous peoples to their own development priorities and strategies and appreciate their contribution to the country's economy. Licences should not be issued for activities that affect the rights of indigenous peoples without proper consultation or consent. Redress should be provided for damage caused by projects inflicted on their ancestral lands and territories;

(d) There should be an immediate suspension of forced evictions. The authorities should resolve the underlying causes of such displacements by engaging in a due process of investigation, punishment, redress and justice. The situation of displaced indigenous people requires immediate attention, with a comprehensive and coordinated response in line with the applicable international standards, including the Guiding Principles on Internal Displacement;

(e) The Government should, jointly with the indigenous peoples, draw up and implement environmental legislation that will respect the rights of indigenous peoples over their lands, territories and resources, including legislation governing protected areas and activities relating to action against climate change;

(f) The private sector should, as part of its due diligence, fully respect the rights of the indigenous peoples, in accordance with international standards. Human rights impact studies should be conducted before any activity affecting indigenous peoples is undertaken. The use of criminal law to deal with peaceful opposition should cease.

Access to justice and protection of defenders

(a) **The Public Prosecution Service should ensure that its policy on access to justice for indigenous peoples is more strictly applied. All administration of justice officials should be trained in international standards on the rights of indigenous people and in indigenous jurisdiction and these subjects should be included in legal studies curricula. More interpretation services should be provided and the importance of anthropological studies recognized. Action should also be taken to ensure that staff of the Public Prosecution Service follow internal guidelines in the investigation of crimes against human rights defenders;**

(b) **It is essential that collective and culturally appropriate measures of protection be adopted for indigenous peoples and individuals at risk for their defence of their rights. Such measures should be developed in consultation with the indigenous beneficiaries and the relevant institutions, with a view to addressing the underlying risk factors. The State should adopt a public policy on protection for human rights defenders and strengthen the office for the analysis of attacks against human rights defenders;**

(c) **The current General Telecommunications Act should be reformed in order to ensure access by indigenous community radio station to State-authorized radio frequencies;**

(d) **The country's high courts should rigorously apply the criteria on compliance with treaties and reasonable conduct in order to create a consistent jurisprudence that is in conformity with international standards on the rights of indigenous peoples;**

(e) **Threats against judges and magistrates should be investigated and punished;**

(f) **The State should ensure the full implementation of domestic legal rulings and of protective measures and rulings of the inter-American system on the rights of indigenous peoples.**

Free determination, self-government and indigenous justice

(a) **The State should give effect to the recognition of indigenous justice under the Constitution and the country's international obligations and its alignment with ordinary justice. The indigenous peoples' own systems of government and authorities should also be recognized and respected and guarantees should be provided that no new bodies will be established to replace them;**

(b) **The State should ensure that indigenous peoples are provided with the appropriate measures to realize their rights to free, prior and informed consultation and consent, in accordance with international standards on the rights of indigenous peoples.**

Health and education

(a) **A plan of action should be developed and implemented, in cooperation with the indigenous peoples, to eliminate malnutrition as a national priority;**

(b) **The National Policy on Indigenous Midwives should be provided with the necessary funds for its full implementation;**

(c) **The State should increase the budget for health and intercultural bilingual education and ensure that such services are accessible and culturally appropriate, including for indigenous persons with disabilities. Disaggregated and updated data on school dropout rates should be established.**

Indigenous women and girls

(a) **Affirmative measures should be adopted in order to ensure indigenous women's political participation and access to justice. Indigenous authorities should undertake to ensure access to justice for indigenous women and political participation in their jurisdictions;**

(b) Sufficient resources should be allocated for the prevention and investigation of violence against indigenous women and girls;

(c) The legislation that is currently pending for the protection of collective intellectual property rights for indigenous textiles and clothes should be adopted.

Responsibility and remedies for crimes committed during the internal armed conflict

(a) Remedies awarded by the courts for crimes committed during the armed conflict should be implemented;

(b) The National Compensation Programme should be provided with the necessary funds to enable it to comply with its mandate and provide victims with comprehensive and transformative compensation.